THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.12132 OF 2004

(AND BATCH – W.P.Nos.12137, 12895, 13221 of 2004, and 8548 of 2005)

DATED:25.8.2005

Between:

M/s.Bharat Saw Mill, Rayadurg, Anantapur

Rep. by its owner Sri K.Abdul Ajeez,

S/o.K.Dasthagiri Sab and others

…Petitioners

And

The District Forest Officer,

Anantapur, Anantapur District.

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.12132, 12137, 12895, 13221 OF 2004 AND

8548 OF 2005

COMMON ORDER:

In all these Writ Petitions the petitioners are licensees who obtained licences under A.P.Saw Mills (Regulation) Rules, 1969 (for short, the Saw Mills Rules) long ago. They own saw mills at different places in Anantapur. They are aggrieved notices issued by respondent dt.4.10.2003 and dt.21.6.2004 calling upon each of the petitioner to pay the penalty amount stipulated in the notice for allegedly violating Rule 7(2) of the Saw Mills Rules. It is the grievance of the petitioners that Rules 7(1)

and 7(2) of the Rules have no application to the petitioners as they are dealing in timber firewood of Neem, Vepa and Nallatumma species.

The controversy may be appreciated by referring to the factual background taking W.P.No.8548 of 2005 as illustrative case. The petitioner in this writ petition has set up saw mill in an area which is not reserved forest area. According to him, he is maintaining accounts for the stocks handled by his saw mill with reference to Mango, Vepa, Thumma etc. According to the petitioner, these are not forest produce and as per Rule 16 of A.P. Forest Produce Transit Rules, 1970 (for short, the Transit Rules) read with Rule 7(1) of Saw Mill Rules, the timber wood dealt with by the petitioner is exempted from the Rules. The respondent issued notice on 29.4.2003 imposing penalty of Rs.500/- allegedly for non-compliance with Rule 7(2) of the Saw Mills Rules for the year 1999-2000. The petitioner contends that they are not liable to pay any amount. However, he paid the same as the amount levied was paltry sum. The respondent again issued impugned notice in October 2003. This time calling upon the petitioner to pay penalty amount of Rs.22,500/- for alleged non-compliance of Rule 7(2) of Saw Mills Rules, which is assailed in the Writ Petition. The factual ground in all other cases is similar.

A detailed counter affidavit is filed contending that the timber firewood handled by the petitioners is not exempted either under Saw Mills Rules or Transit Rules. Reliance is placed on G.O.Ms.No.94, dt.29.10.2001 whereby and whereunder schedule-II of Transit Rules was amended as a result of which Neem, Vepa and Thumma became non-exempted category of firewood. It is also alleged that the petitioners are not maintaining any records or not submitting annual returns as required under the Rules. The Vigilance and Enforcement Department, Kurnool, pointed out the defects in respect of the saw mills in the Districts observing that they are evading sales tax by not maintaining proper accounts. Accordingly, action is initiated and impugned notice is issued.

Learned counsel for the petitioners, Sri S.Srinivasa Reddy, contends that Rule 7(1) of Saw Mills Rules has no application to exempted species under Transit Rules and therefore petitioners cannot be hauled up for levying penalty either under Section 7(1) or under Section 7(2) of Saw Mills Rules. Alternatively he contends that the amendment made to Schedule-II of Transit Rules came into force with effect from 8.11.2001 when it was notified in the A.P.Gazette and therefore in relation to alleged contravention for the year 1999-2000 this amendment has no application to the case of the petitioners. **Per contra,** learned Assistant Government Pleader for Forests, Sri Gopal submits that the petitioners never maintained any accounts of registers required under rules and regulations and therefore action was initiated as per the report of the Director General of Vigilance and Enforcement.

With the assistance of the learned counsel for the petitioners and the learned Assistant Government Pleader this Court has perused the Saw Mills Rules as well as the Transit Rules. Rule 16 of the Transit Rules no doubt exempts timber firewood and other forest produce in such areas as are specified in schedule-II and schedule-III. 'Firewood' is defined in Rule 2(2) of the Transit Rules as to mean all timber below 25 cms. in girth at its thickets end and one metre in length. If any saw mill is dealing

with firewood or timber firewood as redefined in Rule 2(2) of the Transit Rules they are exempted from the operation of the Transit Rules. Rule 7(1) of the Saw Mills Rules is by reference to Rule 16 of the Transit Rules as part of the Rule and therefore whatever is exempted for the purpose of Rule 16 of the Transit Rules is also exempted for the purpose of Rule 7(1) of the Saw Mills Rules. That is to say, when timber firewood is handled by a saw mill, it is not required to maintain registers in Form III(A) and III(B). However, insofar as Rule 7(2) of the Saw Mills Rules is concerned, it would be different.

Schedule II of the Transit Rules is amended by Notification issued in G.O.Ms.No.94, dt.29.10.2001 published in A.P.Gazette, dt.8.11.2001. This shows that in all the Districts, except in Anantapur, Neem and Vepa (Azardirachta indica), Nallatumma (Acacia nilotica) are exempted, which only means in the District of Anantapur these are not exempted categories of timber firewood. Therefore, whether the petitioners were actually handling timber firewood as defined in Rule 2(2) of the Transit Rules and whether the violation alleged is after coming into force of amended schedule II of the Transit Rules or before it, are matters which require finding of facts with reference to the allegations made by the petitioners. Therefore, this Court refrains from giving any finding on this aspect. Rule 9(2) of the Saw Mill Rules provides for effective alternative remedy to a saw mill licensee aggrieved by any order passed by the District Forest Officer. Liberty is given to petitioners to avail the same.

Petitioners are given two weeks time to file appeal before the jurisdictional Conservator of Forests. As and when such appeals are filed, the appellate authority shall take the appeals on file and dispose of the same within four weeks thereafter after giving opportunity to the petitioners of being heard. In obedience to the interim orders passed by this Court, petitioners have deposited certain amounts. Needless to say, these amounts shall be adjusted or refunded, as the case may be.

The Writ Petitions are accordingly disposed of in the above terms. There shall be no order as to costs.

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25.8.2005 (V.V.S.RAO, J)

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